

**CITY OF TAKOMA PARK, MARYLAND
CLOSED SESSION, PRESENTATION, REGULAR MEETING & WORKSESSION OF
THE CITY COUNCIL
(Adopted 4/11/05)**

March 28, 2005

CLOSED SESSION

OFFICIALS PRESENT:

Mayor Porter
Councilmember Elrich
Councilmember Seamens
Councilmember Williams

STAFF PRESENT:

City Manager Matthews
Deputy City Manager Hobbs
Deputy City Clerk Carpenter

OFFICIALS ABSENT:

Councilmember Austin-Lane
Councilmember Barry
Councilmember Mizeur

The Council convened at 7:06 p.m. in the Municipal Building Council Chambers, 7500 Maple Avenue, Takoma Park, Maryland, to vote to convene in closed session to discuss a personnel matter, pursuant to Annotated Code of Maryland, State Government Article, Section 10-508(a)(1)(i).

Mayor Porter noted that Councilmember Mizeur is out of town and will not be able to be present at the meeting.

Closed Session 3/28/05 - Motion by Williams; seconded by Elrich. The Council voted to convene in Closed Session at 7:05 p.m. in the Municipal Building Administration Office, to discuss a personnel matter (VOTING FOR: Porter, Elrich, Seamens, Williams; ABSENT: Austin-Lane, Barry, Mizeur). OFFICIALS PRESENT: Porter, Austin-Lane, Elrich, Seamens, Williams; STAFF/OTHERS PRESENT: Matthews, Hobbs, Silber. Council was briefed on a personnel matter. (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(1)(i))

Following the Closed Session, the Council reconvened at 7:52 p.m. in the Municipal Building Council Chambers, 7500 Maple Avenue, Takoma Park, Maryland.

OFFICIALS PRESENT:

Mayor Porter
Councilmember Austin-Lane
Councilmember Barry
Councilmember Elrich
Councilmember Seamens
Councilmember Williams

City Manager Matthews
Deputy City Manager Hobbs
Deputy City Clerk Carpenter
Police Chief Creamer
Senior Planner Inerfeld
Public Works Director Lott
City Engineer Khalilian

OFFICIALS ABSENT:

Councilmember Mizeur

COUNCIL COMMENTS:

Mr. Seamens commented on communications. He said he feels there was a lack of communication about the issue of the proposed development in Old Town.

Ms. Matthews responded that staff had received some e-mail communication about the project. Staff is contacted about such issues to provide information about processes, etc. We come forward to Council when we have something definitive to report.

Ms. Austin-Lane commented that she would like to see the issue of development criteria to be brought forward on the Council agenda and brought to bear on development issues like the recent Historic Preservation Commission review of 505 Tulip Avenue and the proposal in Old Town. Staff needs criteria as to when Council needs to be informed and how these proposals are to be evaluated. The City should have weighed in on 505 Tulip Avenue.

Ms. Matthews responded that the issue predates her. In discussions with staff, they are hesitant to take positions without coming to Council first. Suggestions from Council on this issue may be helpful.

ADDITIONAL AGENDA ITEMS:

None.

FOR THE RECORD:

Mayor Porter noted a Mayoral Proclamation recognizing Public Safety Telecommunications Week (April 10-16).

ADOPTION OF MINUTES: 5/27/04; 6/7/04; 7/19/04; 12/13/04; 2/22/05; 3/7/05; 3/14/05; 3/21/05

Moved by Seamens; seconded by Austin-Lane. The motion carried (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

PUBLIC COMMENTS

Enid Hodes, 7418 Hancock, urged Council to get the proposed audit of the City books. She commented on her belief that the City overspends budgeted allotments in all categories. The taxpayers are watching.

Ed Sharp, 906 Glaizewood, updated Council on the Thunderbolts baseball team, who will be entering their sixth season. He asked that Council reaffirm the non-monetary partnership, to include space in the City Newsletter and on the web page, placing flyers in the Municipal Building, and putting camp information in the Recreation Department brochure.

After Mr. Sharp spoke, Council requested staff to research what action was taken by Council last year.

Catherine Tunis, spoke in support of the transport of hazardous materials resolution. She recommended that it list the four types of toxins mentioned in the DC action. Ms. Tunis also spoke in favor of a specialized audit of the City's financial records. Finally, she urged the Council to evaluate the City Attorney annually and consider the cost spent on the City Attorney in the past few years.

Hector Taborda, real estate agent, commented on the Piney Branch properties.

PRESENTATION

1. Update on the Community Center Construction Project

Ms. Matthews reported that an additional trailer has been placed behind the Municipal Building to relocate the City Clerk and Human Resources Manager so that construction can continue in their former offices. Work on the air handler system will begin this weekend. The Administration and Finance staff will be temporarily relocated. Staff will continue to serve the public and continue to do meaningful work during this time.

Mr. Williams asked about the availability of updated financial information.

After a brief discussion, there was Council consensus that the City Manager continue to provide monthly updates.

Mr. Barry requested that the information that Councilmember Austin-Lane and Mayor Porter provided to legislators in Annapolis be made widely available by posting it on the web page. He requested an update on the completion date of the community center.

Ms. Matthews reported that the flood wall issue has been resolved. Staff is working to clarify other issues. The current scheduled completion date is May 1. There is a 30-day grace period before liquidated damages come into play.

Ms. Austin-Lane asked when will the continuation of the facade take place?

Ms. Matthews responded that she will provide that information to Council. The railings are scheduled to be installed.

REGULAR MEETING

2. Resolution re: Final Design of Metropolitan Branch Trail Project

Motion by Austin-Lane; second by Elrich.

Ms. Austin-Lane stated that she would like it to be understood that the resolution includes the tree remediation.

Roland Halstead, 7116 Maple, spoke in support of the resolution. He thanked Rob Inerfeld for his creativity in obtaining and keeping the funding for the trail. He said he looks forward to the actual construction of the trail. He hopes it is done with more sensitivity this time. He appreciates the compromise to preserve the trees. The speed table is an excellent idea.

Ms. Porter thanked the working group, and Councilmember Austin-Lane, who put in a lot of work. She also thanked Rob Inerfeld for coming up with the money.

Resolution 2005-22 was adopted (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

Resolution 2005-22 (Attached)

3. Resolution re: Public Property (8425 Piney Branch Road)

4. Resolution re: Public Property (8435 Piney Branch Road)

Ms. Matthews commented that the City purchased the two properties in 2002 with the intention of constructing a parking garage. The current fiscal year budget assumes that revenues from the sale will be designated for the community center. Our recommendation is that the properties be sold in a competitive, sealed bid process. In accordance with the Charter, Council has authority to take this action after giving public notice (20 days prior to the sale in the City Newsletter).

Mr. Elrich moved the resolution for 8425 Piney Branch Road (the single family house); seconded by Austin-Lane.

Mr. Elrich stated that in the past, we have exercised some control. I'd like to see the residential property go to single family use, not to further encroachment of the commercial area on the neighborhood. As to 8435, I want to be sure we see whether we can further our economic development interest by not contributing to the fragmentation of the commercial development.

Ms. Matthews commented that these resolutions declare the City's intent to sell, and prescribe a method of sale. If we want to consider another goal, then perhaps we should consider an RFP process so that Council could consider factors other than price. My recommendation is that you not adopt the resolutions at this time, until we research it further.

Ms. Austin-Lane asked about the time frame to procure the funds.

Ms. Matthews responded that we have been assuming the revenue; delaying by one week would not be problematic.

Ms. Porter commented that she assumes there is a tradeoff by how restrictive we are and the amount of money.

Ms. Matthews indicated that an adjacent property owner has been in contact with us.

Mr. Elrich commented that we are not just doing this to raise money for the community center. I am not willing to say that getting the most dollars is the most important thing.

Mr. Seamens said he supports Mr. Elrich's position. Maintaining the single family use should not be an excessive burden. The corner could use economic development. Is a sealed bid the most effective way of selling the single family? It is a fixer-upper. Given the housing market, it may be in our interest to contract for repairs.

Ms. Porter suggested postponement of the resolutions, to see if we can modify the method of sale to get the income we require.

Hector Taborda, Remax Agent, commented that the City bought the property from his client, who feels he was forced to sell the properties. He is not interested in purchasing back the property.

Ms. Porter noted he traded the property.

Mr. Tavora suggested putting the properties on the market to get the best price.

Mr. Elrich made a motion to table the resolution until next week or as soon thereafter as staff can be prepared; seconded by Mr. Seamens. The motion carried (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

5. 1st Reading Ordinance re: Emergency Preparedness Committee Membership

Motion by Williams/second by Austin-Lane.

Mr. Williams commented that the ordinance addresses his concerns about membership terms.

Ordinance 2005-8 was accepted at first reading (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

**Ordinance 2005-8
(Attached)**

6. Stormwater Pipe Repair (Maple Avenue)

Public Works Director Al Lott and City Engineer Ali Khalilian were present for the discussion.

Mr. Lott explained the need for replacement of a portion of the pipe leading to the newly installed stormwater catch basin in the vicinity of Tulip and Maple Avenue. He recommends replacement of the pipe before the planned renovation of Maple Avenue (from Philadelphia Avenue to the District line). The flooding that occurs at the church at Tulip and Maple is a result of a section of eight inch pipe that connects to 15 inch pipe which leads to the catch basin. There is money available in the stormwater management fund for this repair.

Ms. Porter asked why is there an eight inch pipe in the middle of 15 inch pipe?

Mr. Khalilian responded that we can only speculate that this may have been installed at some point in the past, in the course of replacing a driveway or some other work. We don't know why.

Mr. Williams asked if we have records that would allow us to figure out the answer to a situation like this? Would it be worth putting in the time, effort and money to improve the records we have?

Mr. Lott responded that in the last two years, we've worked hard to improve our record keeping. We are working to improve our GIS. We don't have a good record of the work done when the system was managed by WSSC.

Mr. Khalilian added that it is a long term investment, to have a survey done. The 1988 plans indicated this section was a 15 inch pipe. With the TV inspections, we will have good records from this point forward.

Ms. Porter commented on a flooding problem at Ethan Allen and Jackson, where it was discovered that there was no pipe. We don't know that the old WSSC records are accurate.

Mr. Seamens expressed support for a more comprehensive stormwater plan. A planned survey would be in order.

Ms. Matthews offered that since Mr. Khalilian came on board, he has prepared a fairly detailed listing of projects. That may be helpful to share with Council.

Mr. Seamens asked how do you know that the rest of the 15 inch pipe is viable? Have you inspected the remaining length?

Mr. Khalilian responded yes, the inspection was done last year. The remainder seems to be relatively intact.

Ms. Austin-Lane thanked staff for tracking this down. Residents and church members have expressed concern over the flooding. What does the \$40,000 pay for?

Mr. Khalilian replied that it includes pipe, curbs, two driveway aprons. This is an estimate, based on experience with the same contractor on the same street. There is some contingency in this.

Mr. Lott added that it costs a little more to hand dig around the utilities. We'll do our best to keep it under \$40,000.

There was Council consensus to proceed with the project.

7. Hazardous Materials Transport

Council discussed the draft ordinance.

Mr. Williams suggested striking the fourth resolved clause so that there is no specification about how the rerouting is take place around the area.

Mr. Seamens agreed that the suggestion seems reasonable and doesn't detract from the resolution.

Ms. Austin-Lane noted that the DC ban has not taken effect. The judge is reviewing the case; the final judgment will be made in early April. As per Catherine Tunis' suggestion, we can list the general four types of toxins if Council thinks it will be helpful.

Ms. Austin-Lane commented that it really important for us to make a statement like this. College Park may be willing to introduce something similar. Hyattsville and Mt. Rainier also have some interest. Then we can move to the county governments to see if they will take a position. Everyone is waiting to see what is happening in DC. I hope that council will support this.

Mr. Williams expressed a concern that some of the language puts us in the position of moving the problem, creating a domino effect. I think it is helpful to avoid that. Just say we need a reasonable approach to this. The federal preemption shouldn't be the end of any action the feds

take. I'm hoping to be able to further that approach through COG and the Emergency Preparedness Council, to encourage language that avoids the "not in my backyard approach."

Ms. Porter agreed. When the Transportation Planning Board discussed this, we raised the concern that it not be only a DC issue.

Council agreed to proceed with scheduling the resolution for adoption. Mr. Williams and Ms. Austin-Lane will work on the language.

BREAK

The Council recessed for a scheduled break at 9:04 p.m. and reconvened in worksession at 9:18 p.m.

8. Legal Services Costs

Ms. Matthews shared information from her review of the issue. Looking at the adopted budget and actual expenditures for legal services, there has been a consistent pattern of negative variance. The figures used were taken from the general purpose financial statements. These variances are noted in the general purpose finance statements.

The other issue is whether or not we have budgeted appropriately. I looked at 2003 and 2004. The single largest expense was general legal advice, advice to Council and staff. Expenditures ranged from \$70-\$80,000. The executive director of COLTA is now a member of the firm of Silber and Perlman (Ken Sigman). The \$55,000 figure includes a wide variety of COLTA services.

Council briefly discussed the history of COLTA expenditures.

Mr. Seamens asked for clarification as to what is covered by LGIT (Local Government Insurance Trust)?

Ms. Matthews clarified that costs noted in her report were those paid by the city to Silber and Perlman. The LGIT claims report does not segregate out legal expenses.

Ms. Silber responded that anything that LGIT covers is forwarded to LGIT. We always try to make sure that anything LGIT should cover, they do cover.

Ms. Matthews then commented on the recodification of the code, \$70,000 in FY03 and \$28,000 in FY04. I have been involved in a recodification. It is not uncommon to involve legal counsel. My predecessor did have legal counsel sit in on many meetings related to recodification. It appears that the recodification expenditures were not factored into the legal expenditures budget.

Looking at the first page of the adopted budget suggests that a higher amount should have been

budgeted. In the area of litigation, it is helpful to confer with the City Attorney to get a sense of litigation expenses when preparing the budget. Based on my discussions as to past practice, no such consultation has taken place with the City Attorney's office.

In the current fiscal year, \$125,000 was budgeted; year to date expenditures are \$105,770. It is difficult to trend out legal expenses. We will experience another variance. Possibly \$160,000 will be spent for the fiscal year.

Mr. Elrich said, regarding COLTA, it is a bit of overkill. We might do something more budget friendly.

Ms. Matthews responded that she has been discussing this with Ms. Daines. We will bring forward recommendations. COLTA orders will need to continue to be reviewed.

Mr. Elrich commented that at the county level, all municipal infractions are being prosecuted by their attorneys. Ms. Matthews agreed to research this.

Ms. Matthews said she wanted to comment on other issues raised as to whether the variance in the budget constituted a violation of the City Charter, Section 809. The key phrase is "general classification of expenditures" (the legal level of budgetary control). If you go through the Charter and Code, there is no definition of the phrase. It can be at a departmental level or a fund level. The annual audit includes a summary of the accounting policies. Note 1 describes accounting and budgetary practices. The budgetary level of control is at the fund level. Total general fund expenses may not exceed the general fund budget. The Council may want to take a different approach, but historically this is how it has been interpreted.

Mr. Williams asked if we'd like to consider defining control at a lower level, what might they be?

Ms. Matthews said it could be at a line item level, but this is virtually unheard of. The other level is at a departmental level. Missouri defines level of control at the fund level. Fund level is most common.

Mr. Seamens commented, I'm amazed that that is the level of control we're talking about. I'm puzzled by past things that have been presented to council for shifting money within a fund.

Ms. Matthews said that's a fair question. When is it appropriate to make budget amendments? It is a question of comfort with the city manager, reporting, financial reporting and accountability. (I would not say in my experience that if a department exceeds its budget, that it is incumbent to make a budget amendment.) Taken to the extreme, an entity could do excessive budget amendments. We could create a false impression that we budgeted perfectly, with little variance. There is a schedule that requires a comparison of budgeted to actual. The variances provide useful information. It is a gauge of how well we've done. Use budget amendments sparingly, taking into account Council priorities. The recent trash truck purchase would be one

example. Another example is the borrowing of \$2 million for street rehabilitation. The receipt of the loan monies and the expenditure was recognized. Many budget amendments had to do with grant monies, projects not done before the end of the fiscal year. Repair of the stormwater pipe, balancing the fund from the reserve, that should be done with Council concurrence and formalized.

Mr. Seamens commented that we need to revisit this, to see if we want to revise the charter

Mr. Elrich commented that the variances should be incorporated. If they are not flagged, how can we budget for the future? Metro development legal work, for example. The budget statement at the end of the year should include information on the reasons for variances. I am not interested in weekly or bi-weekly reporting. Quarterly would not be unreasonable (budget amendments). The reality is, on legal discussions, we have asked where is the money going to come from. To my satisfaction, no one moved money without a sense of where it would come from. Personnel shortages created surplus funds, for example. I feel that we've been consciously aware of this.

Ms. Matthews commented that GASB34 requires government entities to show the original budget and the revised budget, to ensure transparency. The larger issue is financial reporting and accountability. The FY05 budget document did not include FY04 projected expenditures. There is an obligation to provide the Council with ongoing financial information. I think there is an obligation on staff to give you ongoing financial information. Councilmember Seamens has requested monthly legal bills. I will provide copies of the monthly legal bills which will be helpful to keep you in the loop.

Mr. Barry said I agree that budget amendments should not substitute for good financial planning. Because of the poor track record in estimating expenses, we can do a better job. We did predict \$100,000 to fight the hospital expansion. During the budget discussion, there was little time spent on legal expenses. I would like to see considerably more time spent.

Ms. Matthews concurred. My hope is by changing the budget format, you will be able to focus on your primary obligation to the public to focus on the policy standpoint. I will try to make sure you have sufficient detail.

Ms. Porter said I concur with the general notion that we have been underbudgeting for legal expenses. There is a difference between overspending and underbudgeting. Council has given policy direction to staff which resulted in some of these expenses. Some of the public comments seem to suggest that budget amendments be used as a financial management tool. I see the larger general concern that the City be well managed. I would welcome the City Manager's recommendations as to how we can better exercise the fiscal management we're required to.

Mr. Elrich said I would hope you could incorporate some of our comments. The issue is not that we spent more, but that we should be made aware.

Ms. Matthews said she recommends quarterly financial reporting and on an annual basis. When the audit is complete and comes before the Council, I would suggest that we have a worksession where I could walk you through some of the highlights of the schedules. We would then have an opportunity to discuss some of those things publicly.

Mr. Williams commented that when I was first on the council, we received a monthly printout of the budget line items with percentage expended. Maybe that was too much information, but you could flag a number of those in your quarterly reports. We also received and have since stopped receiving the legal services bill. We need more current information and a better ability to oversee this. I saw a number of public comments on getting an in-house attorney. Personnel costs drive our budget. It's hard to get rid of the position later. Those costs can be more out of your control. Look at the long term trend of what our costs have been. It may be different than it appears.

Alain Thery, Erie Avenue, said he agrees that this matter refers to a larger problem in the city – financial reporting. If we accept the view of budgeting at the fund level, then you don't need to spend time on the various departments. There is a vacuum in the Charter. There is no logic to the present system. It has to be remedied. I agree, I don't want an amendment for every little item. For the last five years, there has been first reading in late June of a budget amendment that was approved in second reading in July. The integrity of financial reporting is dismal in the city. I think this should be addressed.

Ms. Matthews said part of the distinction is if you have an item in the budget, where you've overspent an account, you ought to be reviewing how you are budgeting, and you should flag it in regular reports to the Council. When you take away the numbers, it is an allocation of resources and reflection of Council's priorities. Our obligation is to try to stay within the allocations. Variations are inevitable. Budget amendments are more important as a matter of disclosure to the public and the Council.

Mr. Williams asked that Ms. Matthews comment on having second reading of budget amendment in the next fiscal year. We have been told it is allowable.

Ms. Matthews said that generally it should be done within the fiscal year. Rarely, but in some instances you may be in violation of the legal level of control. You should have a sense prior to the end of the fiscal year. You have to take a look at where you will end up as you prepare the budget.

Mr. Elrich commented, you have to look at the whole budget. We do not take money from recreation and put it into public works. In your scenario, it is only theoretical. We expect certain things to be done. If large sums of money disappeared to fund unanticipated items, that would not be acceptable. I would be more concerned if we saw year after year we allocated money for services and staff put that money somewhere else. If we're going to do amendments, it doesn't make sense to exempt legal fees.

Ms. Matthews said we can continue to discuss this. As a general rule of thumb, if you exceed a line item, I don't think that requires a budget amendment. The City Charter provides some discretion to the City Manager. You should be judicious if you do that. For instance, creation of the finance director position. Where we had anticipated savings in another departmental area, we could fund it. I would come to Council with this type of decision.

Mr. Elrich agreed. What are we going to give up to do this?

Ms. Matthews responded that health insurance came in less than expected, and we had savings. If there was a material change in service level, I would certainly come to Council

Ms. Porter noted that department heads have control of their budgets. You wouldn't see money flowing out of Public Works and into Housing, etc. We have had staff come to say reduce X to fund Y.

Mr. They commented that Council should concretize these matters and make it public.

Mr. Elrich said in all the time I've been on Council, we've had these discussions. Those are public discussions. These have not occurred in executive session.

Mr. They commented that in reviewing every agenda from 2000 to the present, he did not see at any time where there was a review of the execution of the budget. I don't want monthly line items. I want to know where we stand.

Ms. Porter said we have had updates halfway through the year as to what the budget looks like and what the unappropriated reserve looks like. We have had these discussions before expending from the unappropriated reserve.

Mr. Seamens said he appreciates the presentation. I will walk away feeling more discomfort than reassurance.

City Attorney Silber said the comment made in the press about "city attorney overspending" is really about prioritization of our assignments. We don't do any work without being asked to do it. It is a result of assignment from the City. Some of the prioritization of assignments the Council and new City Manager will do well. I feel like I haven't had access to having those discussions. I request a fair amount of room for professional discretion. If the Council says we've got to win this, then we expend the resources. I've appreciated serving the community and the Council. Controlling the legal budget together with the City is something I look forward to. I want the community to know that we have provided monthly bills, for 18 years, down to the 10th of an hour. No where else is there that kind of transparent reporting. Tell me what other reporting can we do to help you do your job better. We can give you different kinds of reports. How can we help you manage this better?

Ms. Austin-Lane said when we met, I had a good sense that you understood what kinds of

reports would be helpful.

Ms. Silber said we should have some of that discussion in the evaluation. When you get to review the bills, it will help you to tell us what you need. The advice area is less broken down. We can vary the reports once you get a look at it.

Mr. Elrich asked Ms. Silber to give us a sense of how we can better use you as a monitoring tool – minutes, PIA requests. You don't look at what we do unless we ask you. One value of having legal counsel is having someone who is aware. You are out of the loop unless we bring you in. I would like you to think about ways that legal services can be more proactive. Develop a checklist for us.

Ms. Silber noted that, looking at the yearly analysis, the lion's share goes to advice. That is proactive, discussing with us before you get into trouble.

After brief discussion, Ms. Matthews said she will provide monthly statements from Silber and Perlman to the Council for the back to the beginning of this fiscal year.

9. Request for Financial Review/Specialized Audit

Ms. Matthews noted that this discussion was scheduled at the request of Councilmember Seamens. She reviewed the scope of the City's current annual independent audit. The preparation of the statement is the responsibility of the City. The auditor reviews our accounts, using generally accepted accounting standards. They do not check each transaction. The financial report the auditor prepares includes a GASB34 required management discussion and analysis to flag what represents a change. The auditor does not express an opinion on that. The management letter is a review of the internal control structure. Auditors look at weaknesses in internal control. This is not an internal control audit. The auditors are not accountable to management, but to the City Council. They come before the Council annually. The audit is addressed to the Mayor and Council. I would encourage the Council to take advantage of the fact that they work for you.

Ms. Porter asked the City Manager if she has recommendations for future audits?

Ms. Matthews said Takoma Park's audit is as regulated as any other I've been involved in. It is consistent with audits done with other municipalities across the country.

Mr. Williams asked what is the cost of the audit?

Ms. Matthews said that in 2002, a five-year contract was signed, not to exceed \$96,875 over the five years.

Mr. Seamens explained that he felt that we should have an independent audit of City finances. It is critical for safeguarding the interests of city residents. He has complete confidence in Barbara

Matthews. She can correct the current problems, but it is important for Council to understand outstanding problems. His purpose in requesting the specialized audit is 1) to help to build the confidence of Council and the community that we're tracking tax dollars, 2) to find out where controls are deficient, and 3) to draw a clear line between the current and the past managers. We've been surprised in the past by problems. Ms. Matthews has improved things but Council should help by providing stronger oversight. A forensic auditor could find problems and help to resolve them, using an approach described in the handout. They can review budget records, invoices, and checks to, determine that transactions have been recorded accurately. To ensure that there is no bias, the auditors would be selected by Council, not staff. This approach is used by large businesses and is the only way to safeguard our residents.

Ms. Porter asked how is this different?

Mr. Seamens said the primary focus of the current audit is to certify accuracy in reflecting balances and activities in the general ledger. The proposed audit would look at a small segment, but look at them in great detail to ensure that records are being kept correctly and accurately. Council would help the auditor to select the area of focus, to look at given account for six weeks, for example. Look at transactions and activity. Look at mechanisms in place. Be sure transactions are recorded accurately. The final report would indicate problems and causes, and then recommend controls.

Ms. Matthews said our current audit involves some testing to be sure the accounts are materially accurate. Some of what Councilmember Seamens described is already done. The difference is the level of review and depth of analysis. When I hear forensic audit, it suggests there was significant concern about accuracy and malfeasance. When you think malfeasance has occurred, you look at that. I would refer to this suggestion as an internal control audit, where you look at controls. Our current auditor will look at major material weaknesses. A common one, in small jurisdictions, is how do you segregate functions? A payroll clerk who cuts checks and enters employee data, for example, creates the potential for fraud. You can bring someone in who tears the financial system apart and does a lot of testing. They may recommend changes in policies and procedures. Our auditor will flag problems but will not recommend corrections.

Mr. Seamens commented that he used the term "forensic auditor" because they have more training and experience in investigating. We could change it to internal audit and controls. I'm not looking to put people in jail or find problems to lay out what happened in history. I've had growing concerns that our financial accounting is inadequate. I appreciate that we liked the strength of the new City Manager's accounting background, but we need to move more quickly than she and the new finance director can, and there is a real benefit in drawing a line between the current and previous.

Mr. Williams said he can agree with some of the concerns expressed, but disagrees with some. We all want to be comfortable with how well the finances are handled. General statements of reaching an increasing level of discomfort may be accurate to describe how Mr. Seamens feels, but it is not how I feel. I'd like a sense of how the rest of the Council feels. My reaction was

that City staff would think they are not trusted. The clarification by the City Manager that the current auditors are hired by, report to, and are responsible to us, indicates that we are in a position to be able to speak to our current auditors. We have a responsibility to present to them our concerns. If we don't take the concerns to them, we're remiss. We need to be at a heightened awareness that we have the fiscal responsibility. We need to be prepared to talk to them and say publicly, or privately to them, what our concerns are. Problems get dealt with and revealed by individual whistleblowers. I'm loathe to spend a lot of money on a whole different process, if we already have a process in place.

Ms. Austin-Lane commented that she has heard, and agrees, that there is a credibility problem. We are all about restoring the public trust. Concerns have been expressed to me. We were asked at the last campaign if we agreed with an independent audit. Five of us said yes. I'm comfortable with addressing the current auditors if Council wants to proceed that way.

Ms. Porter asked Mr. Seamens if he has specific concerns.

Mr. Seamens replied that he is not in a position to look at the books, or to judge how well those books are kept or structured. I have concerns with the chart of accounts we use, with some of the issues brought up throughout the years. At times, there has been a lack of control of money in the City. The problem that occurred at the New Hampshire Avenue Recreation Center, for example, where it was months before that became known. That has happened a couple of times. I don't have comfort with our finance system.

Ms. Porter clarified that the situation described was an instance of employee theft. As a result, we changed the way that function money was accounted for, and other functions as well.

Ms. Matthews commented that in her review of the chart of accounts, she would recommend some changes. I would want to work with the new finance director to develop a better system for reporting and planning. I've been working in government for 19 years, and would feel comfortable with working on that in-house. I wasn't here at the time of the Recreation Center problem. Most qualified municipal financial directors can provide guidance on internal controls and recommendations.

Ms. Matthews continued. The audit report should have been done long before this. The audit is in the review process. I'm not sure that comments would change the scope of the audit. They will be providing their presentation. If Councilmembers wish to speak to the auditors privately, I can arrange that.

Mr. Williams agreed. Councilmembers should speak to the auditors; flag general and specific concerns. I have full confidence in the new City Manager's financial abilities. We'll have a pretty clear sense of areas that need attention.

Mr. Barry commented that he is not sure that hiring forensic or internal control auditors is the way to go. I agree and appreciate that late reports and incomplete information are areas of

concern. They don't rise to the level of going outside. Just the term "forensic accountant," and saying things like "I don't want to see anyone going to jail," will raise concerns in the public. That kind of comment ends up in the newspaper. There are public perceptions that there are irregularities. Some of these concerns deal with over-expenditures in certain line items. We can get a handle on it by better budgeting. Maybe we need the quarterly report on expenditures and variances. A lot of the fixes can be done now with the new staff.

Ms. Porter said we have a new City Manager with financial management experience, and a new finance director. We are in a good position. By separating the clerk and finance position we have provided more time to do what was not done before. We've charged the City Manager to deal with this and she will making recommendations. I don't think I'm in favor of hiring another firm to do something our staff can handle.

Mr. Elrich commented that if you keep saying and suspecting that there is wrongdoing, it is de facto implying that someone is doing something wrong. If people have concerns, go to the auditor and lay out your concerns. Lay them out to the Council in public or privately. The problems are clearly management problems, but don't imply anyone on payroll is taking money. The reports were late because of bad management decisions. I would be interested in hearing from the new finance director about controls, and whether they can institute adequate controls or if they would like help. If they want an independent assessment of controls, then that would make sense. I think this Council is committed to bringing about the needed change in the management of the City. We are moving into a far better position than we were before. My concerns are with the management.

Mr. Seamens said he does not have knowledge of anyone taking money or doesn't believe anyone is. That was not the reason for asking, but rather to get a more detailed look at the books than we get from the auditor. Seeing that there is not the support for this idea, I appreciate the time. I appreciate Councilmember Elrich's suggestion to speak with the new finance director.

There was Council consensus to have the new finance director report their findings to the Council.

Alain They commented on a number of reasons for why he continues to support the audit. He believes it would be helpful for the new finance director to have these recommendations.

Ms. Austin-Lane commented, we don't keep track of how staff time is spent. I would like to see that reviewed by the City Manager.

10. Evaluation Criteria for the City Attorney

Ms. Porter noted the purpose of the agenda item was to make the evaluation criteria for the City Attorney public. Written public comments are welcome.

Ms. Porter announced that there will be an Execution Function Session next week to continue the

evaluation of the City Attorney.

ADJOURNMENT

Council adjourned for the evening at 11:33 p.m.